

105TH CONGRESS
1ST SESSION

S. 743

To require equitable coverage of prescription contraceptive drugs and devices,
and contraceptive services under health plans.

IN THE SENATE OF THE UNITED STATES

MAY 14, 1997

Ms. SNOWE (for herself, Mr. REID, Mr. WARNER, Ms. MIKULSKI, Mr. CHAFEE, Mr. DURBIN, Ms. COLLINS, Mrs. MURRAY, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equity in Prescription
5 Insurance and Contraceptive Coverage Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) each year, approximately 3,600,000 preg-
2 nancies, or nearly 60 percent of all pregnancies, in
3 this country are unintended;

4 (2) contraceptive services are part of basic
5 health care, allowing families to both adequately
6 space desired pregnancies and avoid unintended
7 pregnancy;

8 (3) studies show that contraceptives are cost-ef-
9 fective: for every \$1 of public funds invested in fam-
10 ily planning, \$4 to \$14 of public funds is saved in
11 pregnancy and health care-related costs;

12 (4) by reducing rates of unintended pregnancy,
13 contraceptives help reduce the need for abortion;

14 (5) unintended pregnancies lead to higher rates
15 of infant mortality, low-birth weight, and maternal
16 morbidity, and threaten the economic viability of
17 families;

18 (6) the National Commission to Prevent Infant
19 Mortality determined that “infant mortality could be
20 reduced by 10 percent if all women not desiring
21 pregnancy used contraception”;

22 (7) most women in the United States, including
23 two-thirds of women of childbearing age, rely on
24 some form of private employment-related insurance

1 (through either their own employer or a family mem-
2 ber's employer) to defray their medical expenses;

3 (8) the vast majority of private insurers cover
4 prescription drugs, but many exclude coverage for
5 prescription contraceptives;

6 (9) private insurance provides extremely limited
7 coverage of contraceptives: half of traditional indem-
8 nity plans and preferred provider organizations, 20
9 percent of point-of-service networks, and 7 percent
10 of health maintenance organizations cover no contra-
11 ceptive methods other than sterilization;

12 (10) women of reproductive age spend 68 per-
13 cent more than men on out-of-pocket health care
14 costs, with contraceptives and reproductive health
15 care services accounting for much of the difference;

16 (11) the lack of contraceptive coverage in health
17 insurance places many effective forms of contracep-
18 tives beyond the financial reach of many women,
19 leading to unintended pregnancies; and

20 (12) the Institute of Medicine Committee on
21 Unintended Pregnancy recently recommended that
22 "financial barriers to contraception be reduced by
23 increasing the proportion of all health insurance
24 policies that cover contraceptive services and sup-
25 plies".

1 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
 2 **COME SECURITY ACT OF 1974.**

3 (a) IN GENERAL.—Subpart B of part 7 of subtitle
 4 B of title I of the Employee Retirement Income Security
 5 Act of 1974 (as added by section 603(a) of the Newborns’
 6 and Mothers’ Health Protection Act of 1996 and amended
 7 by section 702(a) of the Mental Health Parity Act of
 8 1996) is further amended by adding at the end the follow-
 9 ing new section:

10 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR CON-**
 11 **TRACEPTIVES.**

12 “(a) REQUIREMENTS FOR COVERAGE.—A group
 13 health plan, and a health insurance issuer providing health
 14 insurance coverage in connection with a group health plan,
 15 may not—

16 “(1) exclude or restrict benefits for prescription
 17 contraceptive drugs or devices approved by the Food
 18 and Drug Administration, or generic equivalents ap-
 19 proved as substitutable by the Food and Drug Ad-
 20 ministration, if such plan provides benefits for other
 21 outpatient prescription drugs or devices; or

22 “(2) exclude or restrict benefits for outpatient
 23 contraceptive services if such plan provides benefits
 24 for other outpatient services provided by a health
 25 care professional (referred to in this section as ‘out-
 26 patient health care services’).

1 “(b) PROHIBITIONS.—A group health plan, and a
 2 health insurance issuer providing health insurance cov-
 3 erage in connection with a group health plan, may not—

4 “(1) deny to an individual eligibility, or contin-
 5 ued eligibility, to enroll or to renew coverage under
 6 the terms of the plan because of the individual’s or
 7 enrollee’s use or potential use of items or services
 8 that are covered in accordance with the requirements
 9 of this section;

10 “(2) provide monetary payments or rebates to
 11 a covered individual to encourage such individual to
 12 accept less than the minimum protections available
 13 under this section;

14 “(3) penalize or otherwise reduce or limit the
 15 reimbursement of a health care professional because
 16 such professional prescribed contraceptive drugs or
 17 devices, or provided contraceptive services, described
 18 in subsection (a), in accordance with this section; or

19 “(4) provide incentives (monetary or otherwise)
 20 to a health care professional to induce such profes-
 21 sional to withhold from a covered individual contra-
 22 ceptive drugs or devices, or contraceptive services,
 23 described in subsection (a).

24 “(c) RULES OF CONSTRUCTION.—

1 “(1) IN GENERAL.—Nothing in this section
2 shall be construed—

3 “(A) as preventing a group health plan
4 and a health insurance issuer providing health
5 insurance coverage in connection with a group
6 health plan from imposing deductibles, coinsur-
7 ance, or other cost-sharing or limitations in re-
8 lation to—

9 “(i) benefits for contraceptive drugs
10 under the plan, except that such a deduct-
11 ible, coinsurance, or other cost-sharing or
12 limitation for any such drug may not be
13 greater than such a deductible, coinsur-
14 ance, or cost-sharing or limitation for any
15 outpatient prescription drug otherwise cov-
16 ered under the plan;

17 “(ii) benefits for contraceptive devices
18 under the plan, except that such a deduct-
19 ible, coinsurance, or other cost-sharing or
20 limitation for any such device may not be
21 greater than such a deductible, coinsur-
22 ance, or cost-sharing or limitation for any
23 outpatient prescription device otherwise
24 covered under the plan; and

1 “(iii) benefits for outpatient contra-
 2 ceptive services under the plan, except that
 3 such a deductible, coinsurance, or other
 4 cost-sharing or limitation for any such
 5 service may not be greater than such a de-
 6 ductible, coinsurance, or cost-sharing or
 7 limitation for any outpatient health care
 8 service otherwise covered under the plan;
 9 and

10 “(B) as requiring a group health plan and
 11 a health insurance issuer providing health in-
 12 surance coverage in connection with a group
 13 health plan to cover experimental or investiga-
 14 tional contraceptive drugs or devices, or experi-
 15 mental or investigational contraceptive services,
 16 described in subsection (a), except to the extent
 17 that the plan or issuer provides coverage for
 18 other experimental or investigational outpatient
 19 prescription drugs or devices, or experimental
 20 or investigational outpatient health care serv-
 21 ices.

22 “(2) LIMITATIONS.—As used in paragraph (1),
 23 the term ‘limitation’ includes—

24 “(A) in the case of a contraceptive drug or
 25 device, restricting the type of health care pro-

1 professionals that may prescribe such drugs or de-
 2 vices, utilization review provisions, and limits on
 3 the volume of prescription drugs or devices that
 4 may be obtained on the basis of a single con-
 5 sultation with a professional; or

6 “(B) in the case of an outpatient contra-
 7 ceptive service, restricting the type of health
 8 care professionals that may provide such serv-
 9 ices, utilization review provisions, requirements
 10 relating to second opinions prior to the coverage
 11 of such services, and requirements relating to
 12 preauthorizations prior to the coverage of such
 13 services.

14 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
 15 imposition of the requirements of this section shall be
 16 treated as a material modification in the terms of the plan
 17 described in section 102(a)(1), for purposes of assuring
 18 notice of such requirements under the plan, except that
 19 the summary description required to be provided under the
 20 last sentence of section 104(b)(1) with respect to such
 21 modification shall be provided by not later than 60 days
 22 after the first day of the first plan year in which such
 23 requirements apply.

24 “(e) PREEMPTION.—Nothing in this section shall be
 25 construed to preempt any provision of State law to the

1 extent that such State law establishes, implements, or con-
 2 tinues in effect any standard or requirement that provides
 3 protections for enrollees that are greater than the protec-
 4 tions provided under this section.

5 “(f) DEFINITION.—In this section, the term ‘out-
 6 patient contraceptive services’ means consultations, exami-
 7 nations, procedures, and medical services, provided on an
 8 outpatient basis and related to the use of contraceptive
 9 methods (including natural family planning) to prevent an
 10 unintended pregnancy.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
 12 in section 1 of such Act, as amended by section 603 of
 13 the Newborns’ and Mothers’ Health Protection Act of
 14 1996 and section 702 of the Mental Health Parity Act
 15 of 1996, is amended by inserting after the item relating
 16 to section 712 the following new item:

“Sec. 713. Standards relating to benefits for contraceptives.”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply with respect to plan years begin-
 19 ning on or after January 1, 1998.

20 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 21 **ACT RELATING TO THE GROUP MARKET.**

22 (a) IN GENERAL.—Subpart 2 of part A of title
 23 XXVII of the Public Health Service Act (as added by sec-
 24 tion 604(a) of the Newborns’ and Mothers’ Health Protec-
 25 tion Act of 1996 and amended by section 703(a) of the

1 Mental Health Parity Act of 1996) is further amended
 2 by adding at the end the following new section:

3 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR CON-**
 4 **TRACEPTIVES.**

5 “(a) REQUIREMENTS FOR COVERAGE.—A group
 6 health plan, and a health insurance issuer providing health
 7 insurance coverage in connection with a group health plan,
 8 may not—

9 “(1) exclude or restrict benefits for prescription
 10 contraceptive drugs or devices approved by the Food
 11 and Drug Administration, or generic equivalents ap-
 12 proved as substitutable by the Food and Drug Ad-
 13 ministration, if such plan provides benefits for other
 14 outpatient prescription drugs or devices; or

15 “(2) exclude or restrict benefits for outpatient
 16 contraceptive services if such plan provides benefits
 17 for other outpatient services provided by a health
 18 care professional (referred to in this section as ‘out-
 19 patient health care services’).

20 “(b) PROHIBITIONS.—A group health plan, and a
 21 health insurance issuer providing health insurance cov-
 22 erage in connection with a group health plan, may not—

23 “(1) deny to an individual eligibility, or contin-
 24 ued eligibility, to enroll or to renew coverage under
 25 the terms of the plan because of the individual’s or

1 enrollee’s use or potential use of items or services
 2 that are covered in accordance with the requirements
 3 of this section;

4 “(2) provide monetary payments or rebates to
 5 a covered individual to encourage such individual to
 6 accept less than the minimum protections available
 7 under this section;

8 “(3) penalize or otherwise reduce or limit the
 9 reimbursement of a health care professional because
 10 such professional prescribed contraceptive drugs or
 11 devices, or provided contraceptive services, described
 12 in subsection (a), in accordance with this section; or

13 “(4) provide incentives (monetary or otherwise)
 14 to a health care professional to induce such profes-
 15 sional to withhold from a covered individual contra-
 16 ceptive drugs or devices, or contraceptive services,
 17 described in subsection (a).

18 “(c) RULES OF CONSTRUCTION.—

19 “(1) IN GENERAL.—Nothing in this section
 20 shall be construed—

21 “(A) as preventing a group health plan
 22 and a health insurance issuer providing health
 23 insurance coverage in connection with a group
 24 health plan from imposing deductibles, coinsur-

1 ance, or other cost-sharing or limitations in re-
2 lation to—

3 “(i) benefits for contraceptive drugs
4 under the plan, except that such a deduct-
5 ible, coinsurance, or other cost-sharing or
6 limitation for any such drug may not be
7 greater than such a deductible, coinsur-
8 ance, or cost-sharing or limitation for any
9 outpatient prescription drug otherwise cov-
10 ered under the plan;

11 “(ii) benefits for contraceptive devices
12 under the plan, except that such a deduct-
13 ible, coinsurance, or other cost-sharing or
14 limitation for any such device may not be
15 greater than such a deductible, coinsur-
16 ance, or cost-sharing or limitation for any
17 outpatient prescription device otherwise
18 covered under the plan; and

19 “(iii) benefits for outpatient contra-
20 ceptive services under the plan, except that
21 such a deductible, coinsurance, or other
22 cost-sharing or limitation for any such
23 service may not be greater than such a de-
24 ductible, coinsurance, or cost-sharing or
25 limitation for any outpatient health care

1 service otherwise covered under the plan;
2 and

3 “(B) as requiring a group health plan and
4 a health insurance issuer providing health in-
5 surance coverage in connection with a group
6 health plan to cover experimental or investiga-
7 tional contraceptive drugs or devices, or experi-
8 mental or investigational contraceptive services,
9 described in subsection (a), except to the extent
10 that the plan or issuer provides coverage for
11 other experimental or investigational outpatient
12 prescription drugs or devices, or experimental
13 or investigational outpatient health care serv-
14 ices.

15 “(2) LIMITATIONS.—As used in paragraph (1),
16 the term ‘limitation’ includes—

17 “(A) in the case of a contraceptive drug or
18 device, restricting the type of health care pro-
19 fessionals that may prescribe such drugs or de-
20 vices, utilization review provisions, and limits on
21 the volume of prescription drugs or devices that
22 may be obtained on the basis of a single con-
23 sultation with a professional; or

24 “(B) in the case of an outpatient contra-
25 ceptive service, restricting the type of health

1 care professionals that may provide such serv-
2 ices, utilization review provisions, requirements
3 relating to second opinions prior to the coverage
4 of such services, and requirements relating to
5 preauthorizations prior to the coverage of such
6 services.

7 “(d) NOTICE.—A group health plan under this part
8 shall comply with the notice requirement under section
9 713(d) of the Employee Retirement Income Security Act
10 of 1974 with respect to the requirements of this section
11 as if such section applied to such plan.

12 “(e) PREEMPTION.—Nothing in this section shall be
13 construed to preempt any provision of State law to the
14 extent that such State law establishes, implements, or con-
15 tinues in effect any standard or requirement that provides
16 protections for enrollees that are greater than the protec-
17 tions provided under this section.

18 “(f) DEFINITION.—In this section, the term ‘out-
19 patient contraceptive services’ means consultations, exami-
20 nations, procedures, and medical services, provided on an
21 outpatient basis and related to the use of contraceptive
22 methods (including natural family planning) to prevent an
23 unintended pregnancy.”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to group health plans
 3 for plan years beginning on or after January 1, 1998.

4 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 5 **RELATING TO THE INDIVIDUAL MARKET.**

6 (a) IN GENERAL.—Subpart 3 of part B of title
 7 XXVII of the Public Health Service Act (as added by sec-
 8 tion 605(a) of the Newborn’s and Mother’s Health Protec-
 9 tion Act of 1996) is amended by adding at the end the
 10 following new section:

11 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CON-**
 12 **TRACEPTIVES.**

13 “The provisions of section 2706 shall apply to health
 14 insurance coverage offered by a health insurance issuer
 15 in the individual market in the same manner as they apply
 16 to health insurance coverage offered by a health insurance
 17 issuer in connection with a group health plan in the small
 18 or large group market.”.

19 (b) EFFECTIVE DATE.—The amendment made by
 20 this section shall apply with respect to health insurance
 21 coverage offered, sold, issued, renewed, in effect, or oper-
 22 ated in the individual market on or after January 1, 1998.

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